

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MAPFRE TEPEYAC, SA,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-05-1908
	§	
ROBBINS MOTOR TRANSPORTATION, INC.	§	
<i>Defendant.</i>	§	

MEMORANDUM AND RECOMMENDATION

Cross-Defendant Louisiana Transportation, Inc. has filed a motion for summary judgment (Dkt. 57) on Robbins Motor Transportation, Inc.’s cross-claim for conversion.¹ Robbins has not filed a response. The court recommends that Louisiana Transportation’s motion be granted.

1. Summary Judgment Standards

Summary judgment is appropriate if no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). The party moving for summary judgment has the initial burden to prove there are no genuine issues of material fact for trial. *Provident Life & Accident Ins. Co. v. Goel*, 274 F.3d 984, 991 (5th Cir. 2001). Dispute about a material fact is “genuine” if the evidence could lead a reasonable jury to find for the nonmoving party. *In re Segerstrom*, 247 F.3d 218, 223 (5th Cir. 2001).

¹ On January 25, 2006, the district court adopted this court’s memorandum and recommendation to dismiss Robbins’s claims for negligence, contribution, and indemnity. Robbins’s claim for conversion remained because it was filed after Louisiana Transport filed its motion.

“An issue is material if its resolution could affect the outcome of the action.” *Terrebonne Parish Sch. Bd. v. Columbia Gulf Transmission Co.*, 290 F.3d 303, 310 (5th Cir. 2002).

If the movant meets this burden, “the nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for trial.” *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 282 (5th Cir. 2001) (quoting *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir. 1995)). If the evidence presented to rebut the summary judgment is not significantly probative, summary judgment should be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). In determining whether a genuine issue of material fact exists, the court views the evidence and draws inferences in the light most favorable to the nonmoving party. *Id.* at 255.

2. Conversion

“Conversion is the wrongful exercise of dominion or control over the property of another in denial of, or inconsistent with, the other’s rights in the property.” *US Bank, N.A. v. Prestige Ford Garland Ltd.*, 170 S.W.3d 272, 276 (Tex. App. – Dallas 2005, no pet.). The elements of a cause of action for conversion are:

(1) the plaintiff owned, had legal possession of, or was entitled to possession of the property; (2) the defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with the plaintiff’s rights; (3) the plaintiff made a demand for the property; and (4) the defendant refused to return the property.

French v. Moore, 169 S.W.3d 1, 13 (Tex. App. – Houston [1st Dist.] 2004, no pet.). The elements of demand and refusal are necessary only where the defendant obtained possession

legally but thereafter converted the property to its own use. *Id.* (citing *Presley v. Cooper*, 284 S.W.2d 138, 141 (1955)).

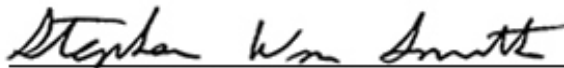
Robbins cannot prove the elements of a cause of action for conversion. The uncontradicted evidence shows that Louisiana Transportation had permission to use Robbins's flatbed trailers without restrictions.² Moreover, there is no evidence that Robbins demanded return of the flatbed trailer and that Louisiana Transportation refused.

3. Conclusion

For the reasons discussed above, the court recommends that Louisiana Transportation's motion for summary judgment (Dkt. 57) be granted and Louisiana Transportation be dismissed as a cross-defendant in this case.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. PRO. 72.

Signed at Houston, Texas on October 25, 2006.


Stephen Wm Smith
United States Magistrate Judge

² Deposition of Larry Vidaurri, at pp. 137, 146-47, Exhibit 1 to Louisiana Transportation's motion.